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SECRETARY, BOARD OF
OIL, GAS & MINING

JEFFREY W. APPEL (3630)
APPEL & WARLAUMONT, L.C.
1100 Boston Building
9 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 532-1252

Attorneys for Castle Valley
Special Service District

J. CRAIG SMITH (4143)
DAVID B. HARTVIGSEN (5390)
SCOTT ELLSWORTH
NIELSEN & SENIOR
1100 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

Attorneys for North Emery Water Users Association
and Huntington-Cleveland Irrigation Company

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

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)	
IN RE: 5-YEAR PERMIT RENEWAL,)	REPLY TO OBJECTION TO
CO-OP MINING COMPANY,)	AND MOTION TO STRIKE
BEAR CANYON MINE,)	PROFFER OF WATER USERS
EMERY COUNTY, UTAH)	
)	CAUSE NO. ACT/015/025
)	Docket No. 95-025

Castle Valley Special Service District ("Castle Valley"),
North Emery Water Users Association ("NEWUA") and Huntington-
Cleveland Irrigation Company ("Huntington-Cleveland")
(collectively, "Water Users"), by and through their respective
attorneys, Jeffrey W. Appel of Appel & Warlaumont, and J. Craig
Smith, David B. Hartvigsen and Scott Ellsworth of Nielsen & Senior,
respectfully submit this Reply to the Co-Op Mining Company ("Co-
Op") Motion to Strike Proffer of Water Users.

issues. Certainly, the evidence presented was not of the character and depth required for a full and fair litigation of the issues, and its presentation should not have provoked the Board to rule on the issues. Unfortunately, it was a classic "damned if you do, and damned if you don't" scenario that exploded into this tedious struggle.

It does remain clear, however, that Co-Op and the Division cannot meet their burden of proving the applicability of collateral estoppel by merely alleging technical defects in the Water Users' Proffer. As the Division itself stated, it is impossible to know from the record what evidence was never presented. Thus, Co-Op's attempt to argue that each of the Water Users' proffers mimics evidence already presented without objection at the Tank Seam hearing is equal to an attempt to prove a negative. The protections of due process and the right to full and fair hearing must not be bypassed with such a technical argument.

CONCLUSION

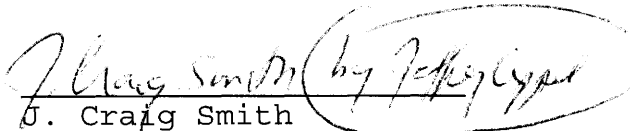
For the forgoing reasons, Water Users request that this Board deny Co-Op's Motion to Strike the Proffer. The Water Users' Proffer accommodates the Board's request by explaining the type of evidence that would have been presented if not for the Board's limitations, and by indicating the areas of new evidence that will be presented through the expert testimony of Peter Neilson. Although Water Users believe that a hearing is the proper forum to tender this evidence in its entirety, if it was the intention of

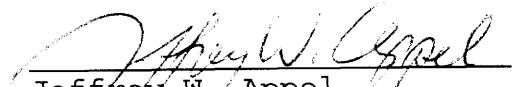
the Board that the Water Users do so, they would be glad to describe the evidence applicable to each issue in great detail.

Respectfully submitted this 25th day of January, 1998.

NIELSEN & SENIOR

APPEL & WARLAUMONT


J. Craig Smith
Attorney for North Emery Water Users
Association and Huntington-Cleveland
Irrigation Company


Jeffrey W. Appel
Attorney for Castle Valley
Special Service District